



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0648]

RIN 1625-AA00

Safety Zone; Hudson River, Edgewater, NJ.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the waters of the Hudson River in the vicinity of Edgewater, NJ. This zone is intended to restrict vessels from a portion of the Hudson River due to the presence of a dielectric oil leak from a submerged power cable, and the hazards associated with the cable repair vessels. This temporary safety zone is necessary to protect people and vessels from the hazards associated with this event. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port New York.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through July 10, 2017. For the purposes of enforcement, actual notice will be used from July 10, 2016 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0648 in the “SEARCH” box and click

"SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email MST1 Kristina Pundt, Waterways Management Division, U.S. Coast Guard Sector New York; telephone 718-354-4352, email Kristina.H.Pundt@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NAD 83	North American Datum of 1983
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

On January 2, 2016, the Coast Guard received notification of a dielectric oil release from a submerged power cable in the Hudson River in the vicinity Edgewater, NJ. In response, on February 5, 2016, the Coast Guard published a temporary final rule at 33 CFR 165-T01.0028 (81 FR 246181) establishing a safety zone to be enforced until July 9, 2016 or until completion of cleanup and cable repairs. On May 29, 2016, the Coast Guard received notification that cleanup operations and cable repairs were completed. The Coast Guard received notification of another dielectric oil release from a submerged power cable in the Hudson River in the vicinity of Edgewater, NJ on June 28, 2016.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are

“impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. Waiting for a notice and comment period to run would inhibit the Coast Guard from protecting the public and vessels from the possible hazards associated with this dielectric oil leak and the hazards associated with the cable repairs.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. For the same reasons as discussed in the preceding paragraph, waiting for a 30 day notice and comment period to run would be impracticable.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port New York (COTP) has determined that a temporary safety zone is necessary to ensure the safety of vessels from the hazards associated with this dielectric oil leak and power cable repairs.

### **IV. Discussion of the Rule**

This rule establishes a safety zone from July 10, 2016 through July 10, 2017. The safety zone will cover all navigable waters of the Hudson River extending 1700 feet from the New Jersey shoreline and approximately 460 feet on either side of the charted power cable between Edgewater, NJ and W 110<sup>th</sup> street, Manhattan, NY.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the COTP or a designated representative. Vessel operators must contact the COTP or an on-

scene representative to obtain permission to transit through this safety zone. The COTP or an on-scene representative may be contacted by VHF Channel 16.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, and will not adversely alter the budget of any grant or loan recipients. Vessel traffic will be able to safely transit around this safety zone. This safety zone only affects a small-designated area of the Hudson River waterway. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 and publish the information in the Local Notice to Mariners.

### **B. Impact on Small Entities**

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are

independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in

complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone that will prohibit entry within the dielectric oil spill, cleanup, and power cable repair area, and is therefore categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination will be available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T01-0648 to read as follows:

§165.T01-0648 Safety Zone: Hudson River, Edgewater, NJ.

(a) Location. The following area is a temporary safety zone: All U.S. navigable waters of the Hudson River bound by the following points: 40°48'40.088"N, 073°58'53.026"W; thence to 40°48'34.267"N, 073°58'37.096"W; thence to 40°48'26.404"N, 073°58'42.270"W; thence to 40°48'33.882"N, 073°59'01.955"W, thence along the western shoreline to the point of origin. All coordinates are based on the NAD 83.

(b) Enforcement period. The safety zone described in paragraph (a) of this section will be enforced from July 10, 2016 through July 10, 2017, unless terminated sooner by the COTP.

(c) Regulations. (1) In accordance with the general regulations in 33 CFR §165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or a designated on scene representative.

(3) An "on-scene representative" of the COTP is any Coast Guard commissioned, warrant or petty officer or a Federal, State or local law enforcement officer designated by or assisting the COTP to act on his behalf.



(4) Vessel operators must contact the COTP via the Command Center to obtain permission to enter or operate within the safety zone. The COTP may be contacted via VHF Channel 16 or at (718) 354-4353. Vessel operators given permission to enter or operate within the safety zone must comply with all directions given to them by the COTP, via the Command Center or an on-scene representative.

Dated: July 8, 2016

M. H. Day,  
CAPTAIN, U.S. Coast Guard,  
Captain of the Port New York.

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